

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**RUTH SMITH**, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

**SUNPATH, LTD.**, a Massachusetts corporation,

Defendant.

Case No. 1:22-cv-00081-LMB-WEF

**DECLARATION OF PATRICK H. PELUSO**

I, Patrick H. Peluso, declare as follows:

1. I am an attorney with the law firm Woodrow & Peluso, LLC and counsel of record for Plaintiff Ruth Smith (“Plaintiff” or “Smith”).

2. On January 26, 2022, Plaintiff filed the instant action alleging wide-scale violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA” or “Act”) and the Virginia Telephone Privacy Protection Act (“VTPPA”).

3. On November 9, 2022, Plaintiff issued a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action directed to Five9, Inc. Among other things, the subpoena sought the call records, which would reflect the calls placed to Plaintiff and the class, and documents reflecting the functionality of the dialing system.

4. On November 30, 2022, at 6:17 p.m. MT, Five9 produced the call records reflecting all of the calls placed to Plaintiff and the proposed class. The records reveal millions of calls placed by SunPath’s third party marketer, American Protection.

5. Given the recent production of the records, our office did not have an opportunity

to review the Five9 call records with Plaintiff Smith prior to her deposition.

6. Rather, counsel anticipated that the Five9 call records would be presented to Smith during her deposition, however, SunPath's counsel did not provide or question her regarding the records—despite Smith's testimony that the records contain an accurate reflection of the calls.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 25, 2023, in Denver, Colorado.

By: /s/ Patrick H. Peluso

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